IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1346 OF 2000

1. Mr. Wallace Joseph Hayden Age 70.
2. Mrs. Enid Anna Hayden, Age 66
3. Mr. Andre Hayden, Age 36
4. Mr. Schubert Hayden, Age 32
5. Mr. Croydon Hayden, Age 28
Residing at Block No.V, The ARK, 171, ST. Martin's Road, Bandra (West), Mumbai - 400 050. ..Petitioners (Org.Accused)

Vs.

1. State of Maharashtra
2. The Sr. Inspector of Police Bandra Police Station, Bandra (West), Mumbai - 400 050.
3. Cyril E. Henriques Residing at Flat No.6, Bank of India Bldg., 56 Hill Road, Bandra (West), Mumbai - 400 050 ..Respondents

Mr. R.B. Jaiswal for the petitioners.
Mr. A.S. Shitole, APP for State.
Mr. Mannadia i/by M/s.Mannadia and Co. for respondent no.3.

CORAM: B.H. MARLAPALLE,J.

Reserved on : July 13, 2007.
Pronounced on : July 20, 2007.

JUDGMENT:

1. This petition filed under Article 227 of the Constitution read with Section 482 of Cr.P.C. prays for quashing the proceedings in Criminal Case No.

15/I & R./1998 presently pending before the Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Bombay and to quash and set aside the order dated 7/9/2000 made on the Remand Application No.184/RA/2000 and the order dated 23/9/1999 passed by the learned Additional Chief Metropolitan Magistrate.

2. The facts leading to this case and which are not in dispute are that, one Mrs. Serah Henriques was the owner of the property situated at 171, St. Martin's Road, Bandra, Bombay 400 050, where she was residing with her six sons and one daughter and in addition there were four tenants, one of whom was one Mrs. May Rodrigues much before 1950 and she was residing with her nephew Mr. Wallace Hayden, the present petitioner no.1. The daughter of Mrs. Serah Henriques, the present petitioner no.2, married the petitioner no.1 in 1961 and petitioner nos.3,4 and 5 are the sons from the said marriage. The petitioners continued to stay in the tenanted premises occupied by Mrs. May Rodrigues. On getting to know the news that the landlady was negotiating with the builder to develop the property Mrs. May Rodrigues sent a legal notice to the landlady in June 1972 and filed RAD Suit

No. 5129 of 1972 in the Small Causes Court at Bombay sometimes in August 1972 and joined all the sons of the landlady, including the present respondent no.3 and the partners of the construction firm by name M/s. Nanavati Construction. Ex parte decree came to be passed in favour of the tenant on 19/10/1973 declaring her to be a tenant and in addition permanent injunction from demolishing the tenanted premises against the builder and the landlady was also granted. The tenant expired in 1981 and the landlady accepted the present petitioner no.1 as the tenant and issued rent receipts from 1981 to 1985. The partners of M/s. Nanavati Construction filed suit bearing No.1403 of 1975 for specific performance of agreement to sell against the landlady and her sons and the said suit was decreed and on 9/8/1995 Minutes before the Prothonotary of this court in HC - Suit No.1403 of 1975 were signed. Sometimes in April 1990 the petitioner no.1 filed RAD Suit No.2693 of 1990 in the Small Causes Court seeking permanent injunction from demolition of the tenanted premises, even though the earlier order of permanent injunction in RAD Suit No.5129/1972 at the instance of the original tenant was already in operation. On 10/8/1993 order of

injunction was passed in RAD Suit No. 2693 of 1990 and the challenge to the same in Appeal No. 150 of 1994 was unsuccessful. Writ Petition No. 663 of 1995 was filed by the Nanavati Builders on 20/3/1995 and prior to this on 10/8/1993 the present respondent no.3 who was defendant no.3 in RAD Suit No. 2693 of 1990 made an application to the Small Causes Court for sending the original rent receipts to handwriting expert as according to him those rent receipts were forged. The said application was rejected holding that the documents could be sent to handwriting expert after defendants filed their Written Statement and the issue can be decided during the trial of the suit. An application came to be filed before this court seeking directions to produce the original rent receipts and the said application was rejected. On 17/4/1998 private complaint No.15/IR/98 came to be filed by the present respondent no.3 against the Bandra Police for investigation of alleged forgery of rent receipts produced in the Small Causes Court. Investigation was carried out by the Inspector of Bandra Police Station and he submitted his report under Section 156(3) of Cr.P.C. The complainant made an application in the Small Causes Court on 14/2/2000 praying to allow the

police to take inspection by Expert of the disputed rent receipts and while all these proceedings were pending, the petitioner no.1 came to be arrested by the Bandra Police Station on 9/7/2000 and was subsequently released on conditional bail on the same day.

3. In his order dated 10/8/1993 the learned Judge of the Small Causes Court stated that admittedly the plaintiff-tenant had produced rent receipts on record in Injunction No. No.122 of 1990 which were purported to be issued by the landlady and photostat copies of those receipts were supplied to the defendants. As per the provisions of the C.P.C. the court can direct the plaintiff to supply copies of the documents on which he has placed reliance to the other side and that was already done by the plaintiff. In case the defendants had any doubts about the veracity of these receipts, they could raise that point in their Written Statement and could very well agitate the same at the time of hearing of the suit. The learned Judge further observed that the defendants were at liberty to convince the court that the signatures on the rent receipts were forged.

4. When the veracity of the rent receipts was doubtful, as per the defendants, they were not prevented from making an application to the Small Causes Court during the course of the trial of the suit to forward the rent receipts to the handwriting expert so as to obtain his opinion and on submission of the opinion either way, both the parties were at liberty to examine the handwriting expert. Thus the issue regarding the signature of the landlady on the subject rent receipts and its genuineness could have been decided by the Small Causes Court during the trial of the suit in which these receipts were brought on record. It was most unwarranted for the present respondent no.3 to approach the larned Metropolitan Magistrate with a criminal complaint for the offences punishable under Sections 467 to 469, 471 and 420 read with Section 34 of IPC when the issue of the authenticity of the rent receipts was also subjudice before the Small Causes Court. The respondent no.3 abused the process of law by filing a private complaint before the learned Metropolitan Magistrate, 9th Court, Bandra, Bombay for the very same purpose and even otherwise the issue, whether the rent

receipts were signed by the landlady or not has to be proved by the handwriting expert and not by the police. The criminal complaint was aimed at harassing the petitioners-tenants and to make them rush from pillar to post. By way of interim relief granted by this court on 29/9/2000 the trial of the complaint has been stayed and the trial of the complaint, if allowed, is bound to result in duplication of the same action which the Small Causes Court is competent to take for verification of the signatures of the landlady on the rent receipts.

5. Hence, the petition succeeds and the same is hereby allowed partly. Rule is made absolute in terms of prayer clause (b), (c) and (cc). Writ to go forthwith.

(B.H. Marlapalle,J.)